

2300 N Street, NW Suite 700 Washington, DC 20037 Sender's Direct Line: 202.365.0325

KB@KarenBrinkmann.com

June 12, 2013

VIA ELECTRONIC FILING

Marlene H. Dortch Secretary Federal Communications Commission 445 12th Street, SW Washington, DC 20554

Re:

Applications of Sprint Nextel Corporation, Transferor, and SoftBank Corp., and Starburst II, Inc., Transferees, for Consent to Assign or Transfer Control of Licenses and Authorizations, and Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act, As Amended, IB Docket No. 12-343, File No. ISP-PDR-20121115-00007

Dear Ms. Dortch:

MVNO Association files this letter in response to and in support of the recent letter submitted in the above-referenced docket by Minority Media and Telecommunications Council ("MMTC"). MVNO Association shares MMTC's concerns about the effect of the pending SoftBank-Sprint acquisition on access of underserved communities to wireless services. As explained below, MVNO Association members seek to play a unique role in serving diverse and low-income communities for their wireless needs. The MVNO Association is particularly concerned that grant of the pending transaction without appropriate conditions could limit the availability of such services.

The Pending Transactions Should Be Conditioned On Access To Resale Arrangements

MVNO Association members provide vital mobile wireless services to underserved communities, such as minority, immigrant, rural, and low-income populations, throughout the Nation. MVNO Association urges that any approval for the SoftBank Corporation ("SoftBank") acquisition of Sprint Nextel Corporation ("Sprint") be conditioned on a commitment by the buyer to continue enabling mobile virtual network operators ("MVNOs") to provide mobile wireless services on commercially reasonable terms and conditions pursuant to their existing resale agreements with Sprint. Further, the applicants should be required to commit to offering

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new resale agreements to MVNOs on commercially reasonable terms and conditions that are reasonably similar to those currently in effect under agreements with Sprint. Imposing these conditions furthers the public interest by promoting service to underserved populations.

Sprint is a major source of spectrum used by MVNOs under resale agreements. Without access to Sprint spectrum, via resale on commercially reasonable terms and conditions, MVNOs will be unable to provide services to subscribers that rely on low-cost and prepaid mobile wireless services. MVNO Association members are concerned that SoftBank has not yet committed to honor existing MVNO arrangements or to enter into new MVNO arrangements on favorable terms, necessitating that MVNO Association raise its concerns at this stage in the proceeding. MVNO Association would seek the same commitments from DISH Network Corporation ("DISH") or any other entity acquiring Sprint.

MVNO Association proposes that the Commission adopt the following condition as part of its approval of the SoftBank acquisition of Sprint, or any other entity's acquisition of Sprint, including the proposed DISH acquisition: The acquiring entity shall be required to offer its mobile wireless services for resale to mobile virtual network operators on commercially reasonable terms and conditions, either by continuing existing resale agreements the MVNOs have with Sprint or by negotiating resale agreements for mobile wireless services on commercially reasonable terms and conditions that are reasonably similar to those currently in effect under agreements with Sprint. The Commission may enforce this requirement through its complaint process, or by petition for declaratory ruling, on a case-by-case basis, taking into consideration the totality of the circumstances.

MVNOs Play A Unique Role In Competitive Mobile Wireless Services

The Commission has recognized the unique benefits provided by MVNOs,² specifically that MVNOs target their services to segments of the population where other carriers often have less access to the customer base, or have little or no interest in serving that particular customer base.³ Importantly, the Commission assessed that MVNOs increase "consumer welfare by providing service to various market segments using the capacity of the hosting facilities-based

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See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, Sixteenth Report, 28 FCC Rcd 3700 (2013) ("Wireless Competition Report").

[&]quot;MVNOs may target their service and product offerings at specific demographic, lifestyle, and market niches, including consumers who are low income, are relatively price sensitive, do not want to commit to multi-year subscription contracts, have low usage needs, or do not want to buy a bundle that contains unwanted data services." Wireless Competition Report, ¶ 29. The success of MVNOs depends on their access to these market segments based on factors such as brand reputation and marketing strategies, but these markets are also less appealing to other prepaid service provides because the ARPU generated by MVNOs' customer base is so low. *See* Wireless Competition Report, ¶¶ 31 and 174.

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provider and the marketing strategy ... [of their own] distribution network," but they also "often increase the range of services offered by the host facilities-based provider." Sprint's wholesale agreements with MVNOs have been an important factor in fostering the growth and success of MVNOs, which has benefitted unserved and underserved segments of the consumer market. Without continued access to resale agreements offered on commercially reasonable terms and conditions, MVNOs cannot continue to provide services that promote the consumer welfare. 6

The Commission Has Authority To Enforce Commercially Reasonable Negotiations

Similar to the Commission's authority to enforce its requirement that facilities-based providers of commercial mobile data services offer data roaming agreements with other providers on commercially reasonable terms and conditions, the Commission also has authority to enforce a requirement that facilities-based wireless providers offer resale agreements to MVNOs on commercially reasonable terms and conditions. As in the Roaming Data Order, the Commission may establish dispute resolution procedures to resolve complaints about negotiations of MVNO resale agreements. Specifically, the Commission can assess whether an "offering includes commercially reasonable terms and conditions or whether a provider's conduct during negotiations, including its refusal to offer ... [services], is commercially reasonable, on a case-by-case basis, taking into consideration the totality of the circumstances."

The Proposed Conditions Will Serve The Public Interest

MVNO Association urges the Commission to preserve the access that minority, immigrant, rural, and low-income subscribers have to affordable mobile wireless services by placing appropriate conditions on any Sprint acquisition. The public interest requires that the acquisition of Sprint will not result in MVNOs having resale agreements with less favorable terms and conditions than they currently receive, or could enter into today, with Sprint. The Commission should require the applicants to honor and renew existing MVNO agreements on the same terms and conditions. The Commission should also require the applicants to offer terms and conditions that are reasonably comparable to those that other MVNOs have obtained with Sprint to MVNOs seeking new agreements.

Wireless Competition Report, ¶ 35.

Wireless Competition Report, ¶ 31.

While the Commission notes that comprehensive data on MVNO subscribers are generally not reported, the Commission has relied on Form 477 data in estimating that ten percent of all mobile wireless connections were reseller connections in December 2011, an increase of one percent since December 2010. *See* Wireless Competition Report, ¶ 33

⁷ Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, Second Report and Order, 26 FCC Rcd 5411 (2011) ("Data Roaming Order").

Data Roaming Order, ¶ 85.

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Please contact the undersigned should any questions arise concerning this filing.

Respectfully submitted,

/s/

Karen Brinkmann
Robin Tuttle
KAREN BRINKMANN PLLC
2300 N Street, NW
Suite 700
Washington, D.C. 20037
(202) 365-0325
KB@KarenBrinkmann.com
Counsel for MVNO Association

cc: Dave Grimaldi, Chief Counsel, Senior Legal Advisor to Acting Chairwoman Clyburn Louis Peraertz, Legal Advisor to Acting Chairwoman Clyburn David Goldman, Senior Legal Advisor to Commissioner Rosenworcel Courtney Reinhard, Legal Advisor to Commissioner Pai